

## LINE OF DUTY / MISCONDUCT DETERMINATIONS

To assist in the administration of naval personnel issues, the commanding officer is required to inquire into certain cases of injury or disease incurred by members of his or her command. When these inquiries are conducted, the commanding officer is required to make what is referred to as a line of duty (LOD)/misconduct determination. As in most matters, the type of inquiry and the degree of formality of the report will depend upon the circumstances of the case.

***Reason for LOD/misconduct determinations.*** Adverse LOD/misconduct determinations can affect several benefits and/or rights administered by the Department of the Navy, including: extension of enlistment; withholding of longevity and retirement multipliers for the time missed, and; denial of disability retirement and/or severance pay.

***When LOD/misconduct determinations are required.*** Findings concerning LOD/misconduct must be made in every case in which a member of the naval service incurs a *disease or injury* that:

1. *Might* result in permanent disability; or
2. results in the physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation). JAGMAN 0212.
3. Death.

***What constitutes "line of duty?"*** Injury or disease incurred by naval personnel while on active duty service is presumed to have been incurred "in line of duty" unless there is clear and convincing evidence that it was incurred:

1. As a result of the member's own "misconduct." There must be clear and convincing evidence that the injury was intentionally incurred or the result of willful neglect which demonstrates a reckless disregard for foreseeable and likely consequences.
2. While avoiding duty by deserting.
3. While absent without leave, and such absence materially interfered with the performance of required military duties (generally, in excess of 24 hours).
4. While confined under sentence of a court-martial that included an unremitted dishonorable discharge.
5. While confined under sentence of civil court following conviction of an offense that is defined as a felony by the law of the jurisdiction where convicted.

**Preliminary Inquiries (PI's).** Each injury or disease requiring LOD/misconduct determinations *must* be reviewed through use of a PI. JAGMAN 0222(a)(1). Upon completion of the PI, the command is to report the results to the GCMCA through use of the Personnel Casualty Report system. JAGMAN 0222(b), MILPERSMAN 1770-010. A copy of the PI report is delivered to the appropriate medical department for inclusion in the health or dental record. If the medical officer and the commanding officer are of the opinion that the injury or disease was incurred "in line of duty" and "not as a result of the member's own misconduct," then appropriate entries stating such are entered in the health record. **No further investigation** is required, unless directed by the GCMCA. JAGMAN 0222(c).

**Command Investigations (CI's).** As noted above, use of the PI and health record entries will provide sufficient documentation where injuries or disease are found to have occurred while in the line of duty, not due to misconduct. CI's are only required when:

1. the injury or disease was incurred in such a way that suggests a finding of "misconduct" or "not in line of duty" might result (JAGMAN 0222(d)(1), (2));
2. there is a reasonable chance of permanent disability and the CA considers an investigation essential to ensuring an adequate official record;
3. the injury involves a Naval or Marine Reservist and the CA considers an investigation essential to ensuring an adequate official record.

In endorsing a CI, the CA must specifically comment on the LOD/misconduct opinion and take one of the following actions:

1. If the CA concludes that the injury or disease was incurred "in line of duty" and "not due to a member's own misconduct," that shall be expressed (regardless of whether it differs from or concurs with the IO's opinion). JAGMAN 0223(a)(1).
2. If, upon review of the report or record, the convening (or higher) authority believes the injury or disease was incurred *not* "in line of duty" or "due to the member's own misconduct," the member *must* be informed of the preliminary determination and afforded an opportunity, not to exceed 10 days, to submit any desired information to try and convince the CA otherwise. The member may be permitted to review the investigative report before providing any information. If the member decides to present information, it shall be considered by the CA and appended to the record. If the member elects not to provide information, or the 10 day period lapses without submission, then such shall be noted in the endorsement. JAGMAN 0223(a)(2).

The CI is forwarded to a GCMCA with an assigned judge advocate. The GCMCA shall indicate approval, disapproval or modification of conclusions concerning misconduct and line of duty. A copy of such action will be returned to the CA so that appropriate entries may be made in the member's service and medical records. JAGMAN 0223(b)(1).

**Required warning.** Any person in the Armed Forces, prior to being asked to make or sign any statement relating to the origin, incidence, or aggravation of any disease or injury that he or she has suffered, shall be advised of the right not to make such a statement. (Refer to page IX-2 of this handbook for sample form).

**Mental responsibility.** Suicide and a **bona-fide** suicide attempt, as distinguished from a suicide gesture, creates a strong inference of a lack of mental responsibility. As such, suicides or bona-fide suicide attempts are considered as acts committed in the line of duty/not due to own misconduct in light of the fact that the member demonstrated a lack of mental responsibility, and is therefore not responsible for his or her actions. However, a self-inflicted injury, not prompted by a serious suicidal intent, is a suicidal gesture, and is deemed to be incurred as the result of the member's own misconduct, unless evidence establishes otherwise that the member lacked mental responsibility. JAGMAN 0218, 0222(d)(1)(c).

Refer to page VI-4 of this handbook for a checklist to assist you in preparing LOD/misconduct determinations.

**LINE OF DUTY/MISCONDUCT CHECKLIST**  
(JAGMAN 0212 - 0232)

- Is a LOD/misconduct determination required?
  - Possible permanent disability?
  - Physical inability to perform duties for 24 hours or more?
- A PI must be conducted.
  - See Section II of this Handbook for considerations in carrying out a PI.
- The results of the PI are reported to the GCMCA via the Personnel Casualty Report (MILPERSMAN 1770-010).
- Ensure medical receives a copy of the PI.
- If the CA determines this injury was incurred "in the line of duty, not due to misconduct," ensure medical record entries stating as such are made.
- A command must convene a CI when:
  - The results of the PI indicate that the injury was incurred under circumstances which suggest a finding of "misconduct" might result. These circumstances include, but are not limited to, all cases in which the injury was incurred:
    - while the member was using illegal drugs;
    - while the member's blood alcohol content was of .10 percent by volume or greater. This does not preclude the convening of an investigation if the blood-alcohol percentage is lower than .10, if the circumstances so indicate;
    - as a result of a bona fide suicide attempt; and
    - while the member was acting recklessly or with willful neglect.
  - The results of the PI indicate that the injury was incurred under circumstances that suggest a finding of "not in line of duty" might result.
    - Was the servicemember in a desertion status at the time of injury?
    - Was the servicemember UA at the time of injury?
    - Was the servicemember in the Brig with a dishonorable discharge at the time of the injury?

\_\_\_ Was the servicemember in jail as a result of a civilian felony conviction at the time of the injury?

\_\_\_ There is a reasonable chance of permanent disability and the commanding officer considers the convening of an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident.

\_\_\_ The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers an investigation essential to ensure an adequate official record is made concerning the circumstances surround the incident.

If a CI is necessary, the following information must be included in the final report. The considerations contained in Section III of this Handbook also pertain.

\_\_\_ Identifying data of all persons, military or civilian, killed or injured.

\_\_\_ Name, sex, age.

\_\_\_ Military grade or rate, regular or reserve, armed force, station or residence.

\_\_\_ Experience/expertise, where relevant.

\_\_\_ Civilian title, business or occupation, address.

\_\_\_ Experience/expertise, where relevant.

\_\_\_ All relevant records must be obtained, including: military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological studies.

\_\_\_ Place of injury occurrence, the site and terrain, to include photographs, maps, charts, diagrams or other relevant exhibits.

\_\_\_ Duty status of injured person: leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury.

\_\_\_ Whether any UA status at time of injury materially interfered with his/her military duty.

\_\_\_ Nature/extent of injuries, including description of body parts injured.

\_\_\_ Extent of hospitalization.

\_\_\_ Cost from any civilian medical facilities.

\_\_\_ Amount of time "lost."

\_\_\_ Physical factors and impairment.

\_\_\_ Tired (working excessive hours), hungry, on medication (prescribed or unauthorized), ill or experiencing dizziness, headaches or nausea, exposed to severe environmental extremes.

\_\_\_ Any alcohol or habit-forming drug impairment.

\_\_\_ Individual's general appearance, behavior, rationality of speech, and muscular coordination.

\_\_\_ Quantity and nature of intoxicating agent used.

\_\_\_ Period of time in which consumed.

\_\_\_ Results of blood, breath, urine or tissue test for intoxicating agents.

\_\_\_ Lawfulness of intoxicating agent.

\_\_\_ Mental factors.

\_\_\_ Emotionally upset (angry, depressed, moody, tense).

\_\_\_ Mentally preoccupied with unrelated matters.

\_\_\_ Motivation.

\_\_\_ Knowledge of/adherence to standard procedures.

\_\_\_ Attempted suicide (genuine intent to die v. gesture or malingering). *See* JAGMAN 0218.

\_\_\_ Mental disease or defect. Psychiatric evaluation warranted?

**The CI must clearly document all facts leading up to and connected with the injury or death. Some of the information to be addressed might include:**

- Training.
  - Formal/on the job.
  - Adequacy.
  - Engaged in tasks different from those in which trained.
  - Engaged in tasks too difficult for skill level.
- Emergency responses/reaction time.
- Supervision (adequate/lax/absent).
- Design factors.
  - Equipment's condition, working order.
  - Operating unfamiliar equipment/controls.
  - Operating equipment with controls that function differently than expected due to lack of standardization.
  - Unable to reach all controls from his/her work station and see and hear all displays, signals, and communications.
  - Provided insufficient support manuals.
  - Using support equipment which was not clearly identified and likely to be confused with similar but noncompatible equipment.
- Environmental factors.
  - Harmful dusts, fumes, gases without proper ventilation.
  - Working in a hazardous environment without personal protective equipment or a line-tender.
  - Unable to hear and see all communications and signals.

- Exposed to temperature extremes that could degrade efficiency, cause faintness, stroke or numbness.
- Suffering from eye fatigue due to inadequate lighting or glare.
- Visually restricted by dense fog, rain, smoke or snow.
- Darkened ship lighting conditions.
- Exposed to excessive noise/vibration levels.
- Personnel protective equipment.
  - Using required equipment for the job (e.g., seatbelts, safety glasses, hearing protectors).
  - Not using proper equipment due to lack of availability (identify).
  - Not using proper equipment due to lack of comfort or personal image (identify).
  - Using protective equipment that failed and caused additional injuries (identify).
- Hazardous conditions.
  - Inadequate/missing guards, handrail, ladder treads, protective mats, safety devices/ switches, skid proofing.
  - Jury-rigged equipment.
  - Use of improper non-insulated tools.
  - Incorrectly installed equipment.
  - Defective/improperly maintained equipment.
  - Slippery decks or ladders, obstructions.
  - Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose-fitting clothes, no shirt, conventional eyeglasses vice safety glasses).

**Remember to consult other applicable checklists for information requirements. For example, if a sailor injured himself in a motor vehicle accident, the IO would also need to gather that information listed in JAGMAN A-2-u for inclusion in the final CI.**